Supreme Court, U.S.
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No. 99-701

In The

Supreme Court of the United States

JANICE BOWERS WOLK,

Petitioner,

vs.

UNUM LIFE INSURANCE COMPANY OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court and the Third Circuit Court of Appeals were correct in interpreting the term "beneficiary" as defined in ERISA, 29 U.S.C. § 1002(8), in accordance with its plain meaning, so as to confer standing to sue under 29 U.S.C. § 1132(a)(1) upon a partner who is eligible to receive and does receive benefits under the terms of an employee welfare benefit plan.

2. Whether there exists an irreconcilable split of authority among the Circuit Courts where all Circuit Courts which have construed the term "beneficiary" in the context of the present case are in accord with the Third Circuit's decision.

3. Whether there is any clearly expressed Congressional intention which would require the term "beneficiary" to be construed other than in accordance with its plain meaning, so as to preclude the application of ERISA to a partner who is eligible to receive and does receive benefits under an employee welfare benefit plan subject to ERISA.

CORPORATE DISCLOSURE STATEMENT

In accordance with Rule 29.6 of the Rules of the United States Supreme Court, I certify that the following publicly held company is the owner of ten percent (10%) or more of the stock of the Respondent: UNUMProvident Corporation

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 1002(7):

The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

* * * *

29 U.S.C. § 1002(8):

The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

* * * *

29 U.S.C. § 1132(a)(1):

(a) Persons empowered to bring a civil action.

A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

* * * *

29 U.S.C. § 1144(a):

(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

STATEMENT OF THE CASE

A. Background

The United States Court of Appeals for the Third Circuit in the present case, and every other Circuit Court of Appeals that has had occasion to consider the ERISA definition of "beneficiary" has held that a business owner who chooses to be covered under an employee benefit plan subject to ERISA has standing to sue under ERISA when pursuing claims against the plan. Contrary to Wolk's assertion, there is no irreconcilable conflict among the Circuit Courts with respect to the interpretation of the term "beneficiary" as set forth in 29 U.S.C. § 1002(8).

As the Third Circuit found, the statutory definition is clear and unambiguous. A "beneficiary" is a "person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." Wolk unquestionably satisfies this

definition. Wolk is eligible to receive, has received and continues to receive benefits under the terms of the plan.

Wolk's contention that she will be deprived of an effective remedy for UNUM's alleged bad faith[1] if her state law claims are preempted is specious. Federal preemption is not limited to those circumstances in which the federal remedy is more generous than that provided by state law. If Wolk's state law claims are preempted, she will have the same ERISA remedies available to her as any other plan participant or beneficiary. If Wolk perceives Congress' carefully crafted remedies to be inadequate, her appeal is to the Congress, not the courts.

1. The Parties

Petitioner, Janice Bowers Wolk ("Wolk") is an attorney and former tax partner of the Pittsburgh office of Eckert Seamans Cherin & Mellott ("Eckert Seamans" or the "Firm"). Eckert Seamans was and is one of Pittsburgh's largest law firms, employing some 225 lawyers in the Pittsburgh office alone. Eckert Seamans also maintains offices in Harrisburg, Allentown and Philadelphia, Pennsylvania, as well as Florida, Massachusetts, New York and Washington, D.C., and, according to the complaint filed in the instant case, has an international client base of over 5,000 clients representing virtually every industry.

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[1] Although not an issue in the present appeal, UNUM vehemently denies that it acted in bad faith in its handling of Wolk's claim for disability benefits.

Respondent, UNUM Life Insurance Company of America ("UNUM"), is a corporation with offices and principal place of business located in Portland, Maine. UNUM is in the business of providing, *inter alia*, group disability insurance to employers.

2. The UNUM Policy

Since 1978, employees of Eckert Seamans have been provided with group long-term disability insurance coverage under UNUM Policy No. 58927. Initially, this policy provided no coverage to the firm's partners. (Complaint, ¶18). On December 21, 1990, however, Eckert Seamans entered into Amendment No. 10 to the existing policy, replacing it with an entirely new policy bearing the same number. The new policy had an effective date of September 25, 1990. (Complaint, ¶20). The new policy continued the coverage provided to the Firm's associates and support staff and for the first time also provided coverage to the Firm's partners. (Complaint, ¶21 and Exhibit B thereto).

Under the terms of the new policy, partners and the executive director were designated as Class one employees. Associates and certain other professional employees were designated Class two employees and all other employees were designated Class three employees. (Complaint, Exhibit B, page L-PS-1). Class one employees paid the entire cost of their disability coverage. No contribution was required from Class two and Class three employees. (*Id.*, page L-PS-3).

Contrary to the statement at page 7 of Wolk's petition, there were no individual insurance contracts between the Firm's partners and UNUM. Wolk and other partners of the Firm were covered under the same policy which provided coverage to the Firm's associates and other employees, and which unquestionably was part of an employee welfare benefit plan governed by ERISA.

3. Wolk's Disability Claim

In May 1990, Wolk was diagnosed with chronic fatigue syndrome (CFS). (Complaint, ¶27). During 1992, Wolk's condition deteriorated to the point where she could no longer function as a corporate tax partner. (Complaint, ¶31). Wolk's partnership terminated effective March 31, 1993. (Complaint, ¶32). At that time, Wolk submitted an application for disability benefits. (Complaint, ¶32). UNUM approved Wolk's application and commenced payment of disability benefits effective April 1, 1993.[2] (Complaint, ¶35). UNUM paid benefits of $5,850.00 per month from April 1, 1993 to April 1, 1994, at which time the benefits increased to $6,318.00 per month pursuant to the policy's cost of living adjustment. (Complaint, ¶35).

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[2] Although the UNUM policy included an "elimination period" of 360 days with respect to Class one employees, during which no benefits were payable, UNUM took into consideration that plaintiff had not performed significant duties during the previous year, even though she had continued to receive her full salary. As a result, Wolk suffered no break in income despite the existence of the 360 day elimination period.

On March 27, 1995, UNUM notified Wolk that she no longer qualified for disability benefits under the terms of the Plan. (Complaint, ¶38 and Exhibit D thereto). UNUM advised Wolk of her right to appeal its determination and to submit additional information in support of continued disability. (Complaint, ¶38 and Exhibit D thereto). On April 13, 1995, Wolk, through counsel, notified UNUM of her intention to appeal the denial of further disability benefits. (Complaint, ¶42 and Exhibit F thereto).

On November 6, 1995, at UNUM's request and expense, Wolk underwent neuropsychiatric testing by Marian B. Patterson, Ph.D. Dr. Patterson reported that, although Wolk's deficits in attention and problem solving (presumably attributable to CFS) were not severe enough to produce serious functional impairment in everyday living, they were likely to interfere with her ability to make the complex decisions required of a tax attorney. (Complaint, ¶¶50-51).

Based on this new information, UNUM, on February 27, 1996, notified Wolk that her appeal had been sustained, and that her benefits would be reinstated retroactive to March 27, 1995. (Answer to Complaint, Exhibit A). Wolk commenced the present lawsuit on February 27, 1996, the same day that UNUM notified her of its intention to restore her benefits. UNUM thereafter re-instituted benefit payments and paid all back benefits which were due, with interest. Wolk is currently receiving all benefits to which she is entitled under the terms of the plan. *See* Third Circuit Opinion, 186 F.3d 352, 354 n. 4.

B. Procedural History

Wolk's February 27, 1996 complaint consisted entirely of state law claims for breach of contract, bad faith, "breach of duty of good faith and fair dealing," declaratory judgment, "specific performance of contractual obligation to deal fairly and in good faith," and "specific performance – reinstatement of disability benefits." Following written discovery, both parties filed motions for summary judgment.[3]

In its December 6, 1996, summary judgment motion, UNUM argued that ERISA, 29 U.S.C. § 1144(a), preempted state law claims by partners who claimed eligibility for benefits under an employee welfare benefit plan governed by ERISA. In response, Wolk conceded that the UNUM policy was part of an employee welfare benefit plan, and that ERISA preempted state law claims on behalf of the Firm's employees, but argued that ERISA was inapplicable to her because she was an "employer" rather than an "employee."

On March 31, 1998, the District Court granted UNUM's motion for summary judgment. The District Court found that under a plain reading of the statute, Wolk was a beneficiary and must therefore bring suit under ERISA. Wolk sought and was granted leave to file

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[3] Wolk's motion for summary judgment sought attorney's fees and other unspecified damages on her breach of contract claim. The district court, by order dated September 30, 1997, denied Wolk's motion. This matter is not part of the present appeal.

an interlocutory appeal to the Third Circuit Court of Appeals.

In an opinion and order dated June 30, 1999, published at 186 F.2d 352, the Third Circuit affirmed the judgment of the District Court. The Third Circuit panel unanimously concluded that, inasmuch as Wolk was a person designated by the terms of an employee benefit plan as one who is entitled to a benefit thereunder, she fit squarely within the ERISA definition of "beneficiary," set forth in 29 U.S.C. § 1002(8). The Third Circuit found it significant that all of the Courts of Appeal that had analyzed the term "beneficiary" in a similar context had adopted the "plain language" interpretation of the District Court.

The Third Circuit denied Wolk's petition for rehearing or rehearing *en banc* by order dated July 29, 1999. The present petition for certiorari followed.

REASONS FOR DENYING THE PETITION

A. The Third Circuit's decision is in accordance with the plain language of the statute and every Circuit Court which has had occasion to construe the term "beneficiary."

The starting point in statutory interpretation is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990). *See also Reuben v. United States*, 449 U.S. 424, 430 (1981); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235

(1989). The Third Circuit's analysis faithfully adhered to this guiding principle:

> "Under ERISA, '[a] civil action may be brought – (1) by a participant or beneficiary – (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.' 29 U.S.C. § 1132(a)(1)(B). ERISA defines the term 'participant' as 'any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan.' 29 U.S.C. § 1002(7). A 'beneficiary' is a 'person designated by a participant, or *by the terms of an employee benefit plan*, who is or may become entitled to a benefit thereunder.' 29 U.S.C. § 1002(8) (emphasis added).
>
> To reiterate, it is undisputed that the 1990 Policy qualifies as an employee benefit plan under ERISA. It also is undisputed that partners of Eckert Seamans are designated to receive benefits under the 1990 Policy – indeed, Wolk applied for, and is currently receiving, benefits from UNUM pursuant to the 1990 Policy. Applying the plain language of the statute to these facts, Wolk fits squarely within the second category of ERISA's definition of a plan 'beneficiary.' Thus, we conclude that Wolk is a "beneficiary" under the 1990 Policy."

186 F.3d at 355-56.

The Third Circuit observed that its plain language interpretation had the support of all of the Courts of Appeal that had analyzed the term "beneficiary" in a

similar context. 186 F.3d at 356, *citing, Engelhardt v. Paul Revere Life Insurance Co.*, 139 F.3d 1346, 1351 (11th Cir. 1998) (physician's claim for benefits under policy covering firm's employees confirmed his status as a plan beneficiary); *Prudential Insurance Co. v. Doe*, 76 F.3d 206, 208 (8th Cir. 1996) (managing attorney and controlling shareholder of professional corporation and his daughter were beneficiaries of health insurance plan); *Peterson v. American Life and Health Insurance Co.*, 48 F.3d 404 (9th Cir. 1995), *cert. denied*, 516 U.S. 942 (1995) (partner was beneficiary under ERISA plan covering two partners and one employee); *Harper v. American Chambers Life Insurance Co.*, 898 F.2d 1432, 1434 (9th Cir. 1990) (partner had standing to sue as beneficiary of an ERISA plan). *See also Robinson v. Linomaz*, 58 F.3d 365 (8th Cir. 1995) (sole shareholders were beneficiaries of health insurance plan covering one common law employee).

The reasoning of the Third Circuit and other Circuit Courts is unassailable. Congress chose to include in the ERISA definition of "beneficiary" persons who, for whatever reason, have been designated by the terms of an employee benefit plan as entitled to a benefit thereunder. 29 U.S.C. § 1002(8). Wolk, unquestionably, has been so designated. Wolk was eligible to receive benefits under a policy insuring employees of Eckert Seamans. Wolk has received and is receiving benefits. There can be no doubt that Wolk is a "beneficiary" with standing to sue under 29 U.S.C. § 1132(a)(1).

ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . . " 29 U.S.C. § 1144(a). Wolk's state law claims are

preempted. Any other conclusion would be contrary to the plain language of the statute.

B. Wolk's claim that there is an irreconcilable division of authority among the Circuit Courts of Appeal is erroneous.

Wolk cites the recent decision of the Fifth Circuit in *Vega v. National Life Insurance Services, Inc.*, 188 F.3d 287 (5th Cir. 1999), as acknowledging the existence of a conflict among the Circuit Courts with respect to the interpretation of the term "participant" as defined in 29 U.S.C. § 1002(7). Although several Courts of Appeal have held that an "employer" cannot be an "employee" and hence a "participant" in an ERISA plan. *Fugarino v. Hartford Life and Accident Insurance Co.*, 969 F.2d 178 (6th Cir. 1996), *cert. denied*, 507 U.S. 966 (1993); *Peckham v. Board of Trustees*, 653 F.2d 424 (10th Cir. 1981), *modified*, 724 F.2d 100 (10th Cir. 1983); *Kwatcher v. Mass. Service Employees Pension Fund*, 879 F.2d 957 (1st Cir. 1989), the Third Circuit was quick to recognize that none of these decisions included an in-depth analysis of the term "beneficiary," nor did they address the same factual situation at issue here. *Wolk, supra*, 186 F.3d at 356 n. 5.

The *Kwatcher* line of cases holds that "employer" and "employee" were intended to be "separate animals," *Kwatcher, supra*, 879 F.2d at 959, such that a business owner can never be considered to be a "participant" in an employee benefit plan serving employees of the business. The Fifth Circuit in *Vega* and the Fourth Circuit in *Madonia v. Blue Cross and Blue Shield of Virginia*, 11 F.3d 444 (4th Cir. 1993), *cert. denied*, 511 U.S. 1019 (1994), two of

the very cases on which Wolk relies, specifically rejected this interpretation.

The *Madonia* and *Vega* courts recognized that a sole shareholder may also be an employee of the business he or she owns, and, hence, a "participant" in its employee benefit plans. Although the *Madonia* and *Vega* courts had no occasion to consider the ERISA definition of "beneficiary," they reject Wolk's basic premise that standing to sue under ERISA somehow hinges on the distinction between "employer" and "employee."

The Seventh Circuit decision on which Wolk relies, *Giardono v. Jones*, 867 F.2d 409 (7th Cir. 1989), is likewise distinguishable. *Giardono* merely holds that a plan which benefits only the owners of a business and does not include any of its employees is not subject to ERISA at all. The *Giardono* court likewise had no occasion to consider whether a business owner can be a "participant" in or "beneficiary" of a plan subject to ERISA. *See also Meredith v. Time Insurance Co.*, 980 F.2d 352 (5th Cir. 1993); *Matinchek v. John Alden Life Insurance Co.*, 93 F.3d 96 (3d Cir. 1996).

Given the complete absence of appellate support for her position, Wolk understandably places great reliance on the District Court's decision in *Madden v. Country Life Insurance Co.*, 835 F.Supp. 1081, 1087 (N.D. Ill. 1993). The *Madden* court inexplicably reasoned that a partner cannot be a "beneficiary" in an employee benefit plan because Congress could not have intended that an employer could designate himself as his employee's chosen beneficiary. *See also Harris v. TMG Life Insurance Co.*, 915 F.Supp. 869, 872 (S.D. Tx. 1996). The *Madden* court's reasoning has not

been adopted in any appellate decision, and has not even gained the acceptance of district courts within the Seventh Circuit. *Cf. Eichhorn, Eichhorn & Link v. Travelers Insurance Co.*, 896 F.Supp. 812 (N.D. Ind. 1995); *Spurlock v. Employers Health Insurance Co.*, 13 F.Supp.2d 884 (E.D. Wis. 1998). The same is true of *Harris*, which has been rejected in at least two district court decisions in the same district in which it was decided. *Salameh v. Provident Life and Accident Insurance Co.*, 23 F.Supp.2d 704 (S.D. Tx. 1998); *Lain v. UNUM Life Insurance Company of America*, 27 F.Supp.2d 926 (S.D. Tx. 1998).

Far from evidencing an irreconcilable division of authority, the Circuit Courts which have had occasion to construe the term "beneficiary" have unanimously concluded that the statute means what it says. Not only is there no *irreconcilable* conflict in the interpretation of the statutory definition, there is no conflict at all.

C. There is no reason to disregard the plain language of ERISA.

Wolk's final argument is essentially that Congress did not mean what it said when it defined the term "beneficiary" under ERISA. Wolk first contends that the Third Circuit's plain language interpretation of the term "beneficiary" renders the term "participant," as defined in 29 U.S.C. § 1002(7), moot. As this case dramatically illustrates, however, one can be a "beneficiary" without being a "participant," just as one can be a "participant" without being a "beneficiary," such as in the case of employee group life insurance. The fact that a particular individual may have standing to sue as a participant and

as a beneficiary is not a reason to disregard the plain language of either definition.

Wolk next contends that a "logical reading" of ERISA results in the limitation of the term "beneficiary" to the person designated by the participant or, in the event the participant fails to make a designation, by default under the terms of an employee benefit plan. The simple answer is that if Congress had intended the term "beneficiary" to be so limited, it would not have defined it as it did. As the Third Circuit said:

> "We fail to see how Wolk's interpretation is the 'only logical reconciliation' of ERISA's use of the term 'beneficiary.' At most, it is just another way that ERISA's definition of a plan 'beneficiary' might be satisfied – since persons designated by operation of law are, by definition, 'designated by the terms of the plan.' The fact that 'beneficiary' is used in other provisions of ERISA to refer to the beneficiaries of a participant does not necessarily mean that the term was only intended to refer to such persons. In defining the term, Congress was careful to include a category for those designated by the terms of an ERISA plan. *See* 29 U.S.C. § 1002(8). Were we to limit the second category to those designated by operation of law, we would be overstepping our bounds as a court of law. *See Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980) (stating that courts must 'respect the compromise embodied in the words chosen by Congress. It is not our place simply to alter the balance struck by Congress in procedural statutes by favoring one side or the other in matters of statutory construction.') If Congress did not intend the phrase 'by the terms of an employee benefit plan' to mean

> what it says, it is for Congress alone to correct. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ('We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.')"

Wolk, 186 F.3d at 357.

Likewise, Wolk's contention that her interpretation "promotes uniformity of ERISA decisions by creating only two categories of ERISA jurisdiction," petition, page 24, is a non-sequitur. Apart from producing the result she desires, it is difficult to fathom the benefit to be achieved by the interpretation she promotes. To the contrary, as the Third Circuit observed, Wolk's interpretation creates the anomaly of requiring some insureds to pursue claims under ERISA, while requiring others covered under the identical plan to pursue claims under state law. "Such a scenario would frustrate Congress' intent of achieving uniformity in the law governing employment benefits." *Wolk, supra*, 186 F.3d at 357, *quoting, Peterson, supra*, 48 F.3d at 409. As the Third Circuit went on to observe, "we believe this rationale provides a logical explanation for why Congress chose to include persons designated 'by the terms of an employee benefit plan' in the definition of 'beneficiary.' " *Id.*

The above reasoning also disposes of Wolk's claim that Congress could not have intended to deprive employers, such as herself, from traditional state law remedies. While it is certainly true that federal preemption of state law is not to be taken lightly, this court has time and again commented upon the broad scope of ERISA preemption. *E.g., Alessi v. Raybestos-Manhattan,*

Inc., 451 U.S. 504 (1981); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983); *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987).

ERISA expressly preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . . " 29 U.S.C. § 1144(a). This Court has repeatedly observed that "the express preemption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.' " *Pilot Life, supra*, 481 U.S. at 45-46, *quoting, Alessi, supra*, 451 U.S. at 523. As the *Pilot Life* court observed:

> "Congress' specific reference to § 301 of the LMRA to describe the civil enforcement scheme of ERISA makes clear its intention that all suits brought by beneficiaries or participants asserting improper processing of claims under ERISA-regulated plans be treated as federal questions governed by § 502(a) . . .
>
> The expectations that a federal common law of rights and obligations under ERISA regulated plans would develop . . . would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws."

481 U.S. at 56.

The starting and ending point in the analysis is not, as Wolk would have it, whether she is an "employer" or

an "employee." Congress' interest in promoting uniformity and predictability in its civil enforcement mechanisms prompted it to confer standing to sue on "participants" or "beneficiaries" and further to define "beneficiary" to include persons, such as Wolk, who are entitled to benefit from an employee benefit plan.

Wolk's contention that she will be denied an "effective remedy" if forced to proceed under ERISA, as other employees of the Firm would be required to proceed, has also been addressed by this Court on multiple occasions. *E.g., Pilot Life, supra; Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985). As the *Pilot Life* court succinctly stated:

> "In sum, the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formulation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the Federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA."

481 U.S. at 54.

In short, if Wolk is dissatisfied with the remedies available to her under ERISA, her appeal is to Congress, not the courts.

CONCLUSION

For the reasons set forth herein, the petition for writ of certiorari should be denied.

Respectfully submitted,

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